

# Appeal Process within the Regional Office (RO)

# Appeal Steps

## NOD

- Filed on VA Form 21-0958 – 1 year from date of Notification Letter
- Request DeNovo/DRO Review in text block if desired (*recommended*)

## DRO Review

- DRO issues new rating decision for granted issues, then SOC for unresolved issues

## SOC & SSOC

- Issued on contentions not granted and includes Form 9 (return in 60 days)
- If no DeNovo/DRO Review then SOC (and Form 9) issued without review

## Form 9

- Needs to specifically say (again) what issues is/are appealed (and why)
- Must elect type of hearing if desired (recommend Video – quicker)

## Hearing

- Video hearing held at RO – Transcribed and placed in the claim file

## Decision

- Issued then returned to RO/AMC to generate decisions that turn on the awarded benefits

*Supplemental Statement of the Case (SSOC) will be issued by the DRO if additional evidence is submitted after the SOC and before BVA receives appeal*

# What constitutes an appeal?

- An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case (SOC) has been furnished, a timely filed Substantive Appeal (Form 9).
- A formal disagreement that the RO decision was legally or incorrect based upon the evidence used by the RO

# Notice of Disagreement

- First step in the appeal process
- Standardized form (21-0958)
- Time sensitive – 1 year from decision letter

# Beginning the process

- Identify the specific issues being appealed.

Are they issues that can be appealed?

- \* Service connection

- \* Evaluation (the percentage assigned)

- \* Effective date

- If possible, always talk to the claimant.
- The 0958 drives vet and us to specifically identify what the disagreement is/are.

(DO NOT WRITE IN THIS SPACE)  
(VA DATE STAMP)

**PART I - PERSONAL INFORMATION**[illegible]

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## 4. CLAIMANT'S NAME (First, middle initial, last)

[illegible]

5. MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)

Number and Street  
or Rural Route, P.O.  
Box

Ant Unit Number

City, State, ZIP Code  
and Country

6. PREFERRED TELEPHONE NUMBER (Include Area Code)

7. PREFERRED E-MAIL ADDRESS

## PART II - TELEPHONE CONTACT

8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR MOD?

☐ YES ☐ NO (If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

☐ 8:00 a.m. - 10:00 a.m.    ☐ 10:00 a.m. - 12:30 p.m.    ☐ 12:30 p.m. - 2:00 p.m.    ☐ 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time:

### **PART III - SPECIFIC ISSUES OF DISAGREEMENT**

9. NOTIFICATION/DECISION LETTER DATE

10. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

### A. Specific Issue of Disagreement

### B. Area of Disagreement

C. Percentage (%) Evaluation Sought (If Known)	
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☐ Service Connection  
☐ Effective Date of Award  
☐ Evaluation of Disability  
☐ Other (Please specify)

☐ Service Connection  
☐ Effective Date of Award  
☐ Evaluation of Disability  
☐ Other (Please specify)

☐ Service Connection  
☐ Effective Date of Award  
☐ Evaluation of Disability  
☐ Other (Please specify)

PART III - SPECIFIC ISSUES OF DISAGREEMENT (Continued)		
A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (If known)
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
11A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:		
11B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD? <input type="checkbox"/> YES <input type="checkbox"/> NO    (If so, how many?) _____		
PART IV - CERTIFICATION AND SIGNATURE		
CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.		
12A. SIGNATURE		12B. DATE SIGNED
PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.		

# Preparing 21- 0958

If service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection of only one disability, the Notice of Disagreement must make that clear.

- Letters, 4138's, napkins that state the veteran disagrees... will no longer be accepted— new regulations state all actions must be placed on the correct form. If its not, the veteran will get a letter and a correct form in the mail and the time this takes may cause the NOD to be late.



# All VA Decisions

- The Notice of Disagreement must be filed within one year from the date the VA sent the notification of the decision to the claimant.

# When does the appeal period expire?

Notification of a decision on a claim for service connection is sent on July 1, 2010.

***Expires: July 1, 2011***

# Timeliness

- A decision **cannot** be appealed if the appeal period has expired.
- A decision that a Notice of Disagreement is **not timely** can be appealed.

# Other things to consider:

- If the appeal period expires on a Saturday, Sunday, or a holiday, the next work day will mark the end of the appeal period.
- If the post mark date is within the appeal period the NOD is timely.

# Extensions

- The claimant or his representative can request an extension of the time limit.
- The time limit can be extended for **good cause**.
  - Death in the family, serious illness with long recovery, etc
  - Minor events generally do not rise to “good cause”
- Denial of an extension can be appealed.

# One more consideration:

- If the envelope with the post mark date is not of record the post mark date for VA purposes is presumed to be five working days prior to the date of receipt with the VA.
- This only applies for “mailed” documents– not electronically or faxed documents

# What to do?

- It is best to file a Notice of Disagreement as soon as possible once the the decision to appeal has been made.

If you file early, you do not have to worry about timeliness.

# Proposed Actions

- A proposed action cannot be appealed because it is not a final decision.
- The most common proposed actions are reductions following a review examination.
- A proposed rating of incompetency is also common.



# Objection for a Proposed Action

- If the veteran doesn't agree with a proposed action like a reduction, use 4138 or letter.
- Recommend not using the word “disagree”
  - This can confuse RO personnel to believe the veteran is attempting an appeal and the objection doesn't get associated with the proposal
- Recommend using the word “Object” to proposed (\_\_\_\_\_)

# What are the claimants' options?

- The claimant can request review by a Decision Review Officer (DRO) when the NOD is submitted. (aka: DeNovo Review) *recommended*
  - Request “DeNovo Review” or “DRO Review” (with or without a hearing) in the text box of the 0958
- The claimant can also request the traditional appeal process without DRO review.
  - Causes an SOC to be generated, and sent to BVA quicker
- If the claimant does not specify which process he/she prefers, that information will be requested by letter.
  - If Vet still doesn't state which, then “traditional appeal” and SOC

# DRO review

- The DRO conducts a ***de novo*** review of the appealed issues.
- ***De novo*** review means that the case will be reviewed as if the previous decision had not been made.

# The DRO Process

- The DRO assumes jurisdiction over the decision that has been appealed.
- The DRO works with the claimant and representative to resolve the issue(s) on appeal.
- Once the DRO assumes jurisdiction over a claim, that claim remains with the DRO until resolved or forwarded to BVA.

# Possible DRO actions

- Claim will be reviewed by a DRO to see if any of the issues can be resolved on the evidence of record.
- The DRO will issue a new decision on any issue that can be resolved without additional evidence.
- The DRO can also request new evidence from various sources.

# Other actions:

- Make a new decision if there was a clear and unmistakable error (CUE) with the previous decision.
- Hold an informal conference with the claimant and representative.
- Hold a formal hearing with the claimant and representative.

# Prohibited action

- A DRO cannot reduce or take away benefits previously granted unless there was a clear and unmistakable error in the previous decision.
- A decision by the DRO to reduce benefits or take away service connection based on CUE must be signed by the Service Center Manager.

# DRO Decisions

- Issue a new decision on any issues that can be resolved.
- Issue a SOC/SSOC on issues that cannot be resolved.
- Assume jurisdiction of other issues resulting from a grant of benefits. (Effective date, Chapter 35, SMC/SMP if new decision entitles vet to these benefits)



# Final DRO actions

- Prepare a decision for issue(s) that can be resolved.
- Forward the case to BVA for any issues not resolved locally. (provided vet submits Form 9 after SOC)

# Issues a DRO cannot review:

- Committee on Waivers decisions
- Loan Guaranty determinations
- Insurance issues
- Entitlement determination by the VAMC
- Any previous decision made by the DRO

# Statement of the Case

- A SOC is an explanation of the decision made.
- The SOC identifies all issues on appeal.
- It also identifies all adjudicative actions related to the issues being appealed.

- The SOC will identify all evidence received and the date received.
- It includes all applicable regulations, and the decision made and explains the reason for each decision.
- More importantly, the SOC contains the **FORM 9**

# Supplemental Statement of the Case

- The SSOC will address changes or additions to the SOC. Usually due to new evidence recieved by DRO after SOC.
- A SSOC is not necessary if the new evidence results in a grant of benefits sought on appeal.

# Electing the traditional process

- Elect the traditional process with the NOD.
- Respond to the VA letter requesting an election.
- If there is no response to the letter within 60 days the traditional process will be used.

# The differences between the DRO & traditional process

- There will be no review by the DRO.
- The decision will be reviewed for completeness.
- Generally an SOC will be issued.

# Traditional process cont.

- After receipt of the substantive appeal the case will be transferred to the Board of Veterans' Appeals for decision.
- The appellant has the option of requesting a hearing with the BVA.



# What is a Substantive Appeal?

- A substantive Appeal consists of a properly completed VA Form 9, “Appeal to Board of Veterans’ Appeals,” or correspondence containing the necessary information.
- Highly recommend always use Form 9 to avoid confusion by the RO appeals team

# Appeal to the Board of Veterans' Appeals

- VA Form 9 perfects the appeal.
- A statement that the claimant wishes to continue the appeal is acceptable in lieu of a Form 9.
- Must identify the issues being appealed (like 0958 requires specifics, so too the Form 9)

# Form 9 timeliness

- Must be returned within 60 days of the SOC or before the end of the appeal period, whichever is later.
- Must be received after the date the SOC was mailed.
- A request for an extension of the time limit must be received before the end of that time limit.



**IMPORTANT:** Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.

1. NAME OF VETERAN (Last Name, First Name, Middle Initial)		2. CLAIM FILE NO. (include prefix)	3. INSURANCE FILE NO., OR LOAN NO.
4. I AM THE: <input type="checkbox"/> VETERAN <input type="checkbox"/> VETERAN'S WIDOWER <input type="checkbox"/> VETERAN'S CHILD <input type="checkbox"/> VETERAN'S PARENT <input type="checkbox"/> OTHER (Specify)			
5. TELEPHONE NUMBERS A. HOME (include Area Code) B. WORK (include Area Code)		6. MY ADDRESS IS: (Number & Street or Post Office Box, City, State & ZIP Code)	
7. IF I AM NOT THE VETERAN, MY NAME IS: (Last Name, First Name, Middle Initial)			
8. OPTIONAL BVA HEARING <b>IMPORTANT:</b> Read the information about this block in paragraph 6 of the attached instructions. This block is used to request a Board of Veterans' Appeals hearing. DO NOT USE THIS FORM TO REQUEST A HEARING BEFORE VA REGIONAL OFFICE PERSONNEL. Check one (and only one) of the following boxes: A. <input type="checkbox"/> I DO NOT WANT A BVA HEARING. B. <input type="checkbox"/> I WANT A BVA HEARING BY LIVE VIDEOCONFERENCE. C. <input type="checkbox"/> I WANT A BVA HEARING IN WASHINGTON, DC. D. <input type="checkbox"/> I WANT A BVA HEARING AT A LOCAL VA OFFICE.* <small>*Due to travel requirements for BVA personnel, selecting Option D may result in a lengthier waiting period for the hearing than the other options. (This option is also not available at the Washington, DC, or Baltimore, MD, Regional Offices.)</small>			
9. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BVA: (Be sure to read the information about this block in paragraph 6 of the attached instructions.) A. <input type="checkbox"/> I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENTS OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME. B. <input type="checkbox"/> I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES: (List below)			
10. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)			
(Continue on the back, or attach sheets of paper, if you need more space.)			
11. SIGNATURE OF PERSON MAKING THIS APPEAL	12. DATE (MM/DD/YYYY)	13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY (Not required if signed by appellant. See paragraph 6 of the instructions.)	14. DATE (MM/DD/YYYY)

# Substantive Appeal after an SSOC

- If the substantive appeal has not been received prior to an SSOC, the claimant has 60 days from the date the SSOC was mailed to submit the substantive appeal.

# Hearing options

- VA Form 9 can be used to request:
  - A Travel Board hearing (judge comes to RO)
    - Phasing out, only once a year, long wait times
  - A video conference hearing (*recommended*)
  - A hearing before the Board in Washington DC
    - Travel and lodging at veteran's expense

***A hearing is not required***

# Important to Remember

- The process begins with a NOD.
- The VA then issues a Statement of the Case.
- The appellant must then file a substantive appeal (Form 9).
- If the Form 9 is submitted before the SOC, it does not count as a substantive appeal.

- To appeal, or not to appeal—that is the question: Whether 'tis nobler in the mind to suffer the slings and arrows of outrageous fortune or to take arms against a sea of troublesome decisions, and by opposing, end them.